

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 19589
[Redacted],)	
)	DECISION
Petitioner.)	
_____)	

On August 18, 2006, the staff of the Revenue Operations Division (Division) of the Idaho State Tax Commission issued a Notice of Deficiency Determination [Redacted] (taxpayer) proposing income tax and interest for the taxable year 2005 in the total amount of \$86.55.

On August 4, 2006, the taxpayer responded to a correction notice sent to him by the Division. The Division reviewed the information the taxpayer provided but did not make any changes to its correction notice. Even though the Division received the taxpayer's letter before the Notice of Deficiency Determination was issued, it is considered a timely filed appeal and petition for redetermination of the Notice of Deficiency Determination.

The Tax Commission sent the taxpayer a hearing rights letter to which the taxpayer failed to respond. The Tax Commission, having reviewed the file, hereby issues its decision.

The taxpayer is a citizen and resident [Redacted]. The taxpayer filed a 2005 nonresident Idaho income tax return reporting a portion of the income he received during the year. Attached to the taxpayer's return were a W-2 wage statement and 1042-S Foreign Person's U.S. Source Income Subject to Withholding form. The 1042-S coded the income as scholarship or fellowship grant income and coded it as exempt income under a tax treaty. On the taxpayer's Idaho return, he reported all his income less \$10,000. The taxpayer claimed the \$10,000 was exempt by treaty.

When the taxpayer filed his return, the Division began processing the return and noticed a discrepancy between the income reported on the taxpayer's return and the income reported on the W-2 and the 1042-S. The Division determined the only exempt income was the income reported on the 1042-S and corrected the taxpayer's return accordingly. The Division sent the taxpayer a correction notice. The taxpayer responded that he did not agree with the change.

The taxpayer stated a portion of his income was exempt under Article VI of the treaty between the United States [Redacted] he provided copies of the letters awarding him the Graduate Assistantship that stated the awards were stipends. The taxpayer said that, according to the treaty, a student is entitled to a maximum exemption of \$10,000 each tax year for a maximum of five years on amounts received as stipends, scholarships, or other substitute allowances necessary to provide ordinary living expenses. He insisted that his original filing was correct according to the provisions of the treaty.

The Division reviewed the information the taxpayer provided and determined the amount reported as W-2 wage income was not a stipend and not exempt income. Therefore, the Division issued a Notice of Deficiency Determination and forwarded the matter for administrative review.

The Tax Commission reviewed the matter and sent the taxpayer a letter giving him two options for having the Notice of Deficiency Determination redetermined. The taxpayer did not respond. The Tax Commission sent the taxpayer a follow-up letter but still received no response from the taxpayer. Therefore, the Tax Commission issues its decision based upon the information available.

The treaty between the United States [Redacted] is the treaty that was in effect [Redacted]. Article VI of the Convention Between the United States of America and the Union of Soviet Socialist Republics on Matters of Taxation states:

Article VI

1. Special exemptions.

Income derived by an individual who is a resident of one of the Contracting States shall be exempt from tax in the other Contracting State as provided in subparagraphs (a) through (f).

(a) Governmental employees.

(1) An individual receiving remuneration from government funds of the Contracting State of which the individual is a citizen for labor or personal services performed as an employee of governmental agencies or institutions of that Contracting State in the discharge of governmental functions shall not be subject to tax on such remuneration in that other Contracting State.

(2) Labor or personal services performed by a citizen of one of the Contracting States shall be treated by the other Contracting State as performed in the discharge of governmental functions if such labor or personal services would be treated under the internal laws of the first Contracting State as so performed. However, it is understood that persons engaged in commercial activity, such as employees or representatives of commercial organizations of the USA and employees or representatives of the foreign trade organizations of the USSR, shall not be considered in the USSR and USA respectively as engaged in the discharge of governmental functions.

(3) The provisions of this Convention shall not affect the fiscal privileges of diplomatic and consular officials under the general rules of international law or under special agreements.

(b) Participants in programs of intergovernmental cooperation.

An individual who is a resident of one of the Contracting States and who is temporarily present in the other Contracting State under an exchange program provided for by agreements between the governments of the Contracting States on cooperation in various fields of science and technology shall not be subject to tax in that other Contracting State on remuneration received from sources within either Contracting State.

(c) Teachers and researchers.

(1) An individual who is a resident of one of the Contracting States and who is temporarily present in the other Contracting State at the invitation of a governmental agency or institution or an educational or scientific research institution in that other Contracting State for the primary purpose of teaching, engaging in research, or participating in scientific, technical or professional conferences shall not be subject to tax in that other Contracting State on his income from teaching or research or participating in such conferences.

(2) Subparagraph (1) shall not apply to income from research if such research is undertaken primarily for the benefit of a private

person or commercial enterprise of the USA or a foreign trade organization of the USSR. However, subparagraph (1) shall apply in all cases where research is conducted on the basis of intergovernmental agreements on cooperation.

(d) Students.

An individual who is a resident of one of the Contracting States and who is temporarily present in the other Contracting State for the primary purpose of studying at an educational or scientific research institution or for the purpose of acquiring a profession or a specialty shall be exempt from taxes in the other Contracting State on a stipend, scholarship, or other substitute type of allowance, necessary to provide for ordinary living expenses.

(e) Trainees and specialists.

An individual who is a resident of one of the Contracting States, who is temporarily present in the other Contracting State for the primary purpose of acquiring technical, professional, or commercial experience or performing technical services, and who is an employee of, or under contract with, a resident of the first mentioned Contracting State, shall not be subject to tax in that other Contracting State on remuneration received from abroad. Also, such individual shall not be subject to tax in that other Contracting State on amounts received from sources within that other Contracting State which are necessary to provide for ordinary living expenses.

(f) Duration of exemptions.

The exemptions provided for under subparagraphs (b), (c), (d), and (e) of this article shall extend only for such period of time as is required to effectuate the purpose of the visit, but in no case shall such period of time exceed:

(1) One year in the case of subparagraphs (b)(Participants in programs of intergovernmental cooperation) and (e) (Trainees and specialists);

(2) Two years in the case of subparagraph (c)(Teachers and researchers); and

(3) Five years in the case of subparagraph (d)(Students). If an individual qualifies for exemption under more than one of subparagraphs (b), (c), (d), and (e), the provisions of that subparagraph which is most favorable to him shall apply. However, in no case shall an individual have the cumulative benefits of subparagraphs (b), (c), (d), and (e) for more than five taxable years from the date of his arrival in the other Contracting State.

2. General exemptions.

Income derived by an individual who is a resident of one of the Contracting States from the performance of personal services in the other Contracting State, which is not exempt from tax in

accordance with paragraph 1. of this article, may be taxed in that other Contracting State, but only if the individual is present in that other Contracting State for a period aggregating more than 183 days in the taxable year.

In addition to the language of the Convention, related letters of understanding were incorporated into the treaty. One such letter clarified the provisions of Article VI subparagraphs 1(d) and (e). The letter specified that the exemption under subparagraph 1(e) would not apply to any amount in excess of \$10,000 and that the exemption under subparagraph 1(d) will generally apply to a lesser amount to be determined in each specific case. In the Technical Explanation of the Convention Between the United States of America and the Union of Soviet Socialist Republics on Matters of Taxation, With Related Letters, the explanation for Article VI subparagraph 1(d) states that the amount exempted under subparagraph (d) will not exceed, and will generally be less than, \$10,000 for any taxable year and will be determined on a case-by-case basis. Therefore, the most that a [Redacted] can exempt from taxable income as a stipend is \$10,000.

The taxpayer's income was identified as W-2 wage income and a scholarship or fellowship grant. The scholarship or fellowship grant amounted to \$720, and his W-2 wages were \$17,625.66. [Redacted]. The taxpayer provided letters [Redacted] stating that the taxpayer was to be paid a stipend over the academic year. However, when the Tax Commission [Redacted] asked how it determined whether a payment was a stipend or wages, [Redacted] stated it went through a review process to determine the type of monetary award. Basically, if a student was being paid for services [Redacted] would have to hire someone to do, the student was put on the payroll. If a W-2 was produced, [Redacted] regardless of what a Department may call the payment.

The treaty specifically exempts income from a stipend, scholarship, or other substitute type of allowances. The income identified as W-2 wages comes under the classification of income derived from the performance of personal services. In the treaty, income from the performance of personal services which is not exempted by paragraph 1 of Article VI may be taxed if the individual is present in the contracting state for a period aggregating more than 183 days in the taxable year. See Article VI, subparagraph 2. The taxpayer stated he was in the United States for 334 days during 2005; therefore, any personal services income is taxable by the United States and likewise by the state of Idaho.

The taxpayer also received income from a scholarship or a fellowship grant. The amount the taxpayer received was far less than the \$10,000 limitation, and it was received within the five-year time limitation. Therefore, the scholarship or fellowship grant is exempted by the treaty.

The corrections the Division made to the taxpayer's 2005 Idaho income tax return corresponded with the provisions of the treaty between the United States [Redacted]. Therefore, the Tax Commission upholds the Division's determination of the taxpayer's corrected Idaho tax liability.

WHEREFORE, the Notice of Deficiency Determination dated August 18, 2006, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2005	\$ 86	\$ 5	\$ 91

Interest is calculated to April 1, 2007.

An explanation of the taxpayer's right to appeal this decision is included with this decision.

DATED this _____ day of _____, 2007.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2007, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]
[Redacted]

Receipt No.
